

The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR).

February 2, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of January 24, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to SELLER for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither SELLER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, we respectfully request the department issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

***General Information***

Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent SELLER (the 'Seller') before the Illinois Department of Revenue (the 'Department').

This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailers' Occupation Tax ('ROT') consequences of the actual business practice of the Seller.

The Seller is not currently engaged in litigation with the Department with regard to this or any other tax matter. The Seller is not currently under audit by the Department.

To the best knowledge of the Seller's personnel, and to the best of our knowledge, the Department has not previously ruled regarding this matter for the Seller. Neither the Seller, nor we on their behalf, have, at any time prior, submitted the same or similar issue to the Department.

The Seller requests that certain information be deleted from the PLR prior to dissemination to others. The Seller requests that its name, the name of its parent, address, the location of its facilities, and the name of its representative be deleted.

We have enclosed copies of relevant documentation for your review.

### ***Statement of Material Facts***

The Seller is a wholly owned subsidiary of PARENT and was formed to serve as a central procurement source for the Parent and its operating subsidiaries. The Seller is engaged in the business of selling operating supplies and capital equipment ('supplies') to the Parent and its subsidiaries ('the Customers'). The Seller's principal office is located in CITY2, Illinois. The Seller has entered into a Management Services Agreement with its Parent to operate and maintain its office in CITY2, as well as to provide administrative and managerial services for the Seller. The Seller also maintains an office at Parent's corporate headquarters located at CITY. The operational and maintenance aspects of the CITY office are also covered under the Management Services Agreement, whereby, Parent provides these services.

The Seller will be entering into a Master Sale Agreement ('the Agreement') (a copy of the proposed agreement is attached as Exhibit A) with its Customers. The Agreement sets forth the terms and conditions for the purchase of supplies by the Customers from the Seller .

Under the terms of the Agreement, when a Customer wishes to acquire supplies for its operation, it submits a requisition (i.e., purchase order) to the Seller's CITY2 office. The Seller then submits a purchase order along with a resale certificate to the supplier notifying the supplier that the goods are being acquired for resale and designating the location to which the supplier is to ship the goods. The Seller's requisition to its supplier originates at its office in CITY. On a daily basis, the Seller's representative in CITY2 accumulates information related to the supplies ordered by the Customers during the day and incorporates it into a Sale Agreement (a copy of the proposed agreement is attached as Exhibit B). The Sale Agreement is signed by the Seller's representative in CITY2 and submitted to the Customers for signature. Each Sale Agreement incorporates the terms and conditions of the Agreement, sets forth the supplier, quantity, type, and the sale price of each item to be sold by the Seller. The signed Sale Agreement represents the Seller's complete and unconditional offer to sell the designated property to the Customers and, by operation of law (Article 2 of the Uniform Commercial Code), becomes a binding contract upon acceptance by the customer. Acceptance by Customers may be effected only by an authorized officer, employee, or agent of the Customers signing the original document and returning it to the Seller's representative at CITY2. Suppliers will ship the goods directly to the Customers and ultimately invoice the Seller.

Under the terms of the Agreement, each Sale Agreement becomes binding on the Seller only upon its receipt by the Seller's authorized representative in CITY2.

Upon receipt of the signed Sale Agreement by the Seller's Agent in CITY2, the Customer acquires a legal right to the specified goods. Receipt of the signed contract is the final action necessary to bind the Seller to the sale. The Seller's representative in

CITY2 receives the executed Sale Agreement, logs its receipt and maintains a file of all signed Sale Agreements.

The Seller is invoiced by Suppliers and remits payment through a centralized accounts payable system utilizing Parent's bank account. The Seller invoices Customers for supplies when the Customers receive the supplies. Intercompany journal entries are utilized by the Seller and Customers to record the remittance of payments, reflect supplies transactions and the reimbursement of expenses. Pursuant to the Management Services Agreement, Parent will pay all of Seller's expenses. Reimbursement for these expenses will occur through the aforementioned journal entry process.

### ***Issue***

Whether the receipt of signed Sale Agreements, representing the Customers acceptance of the Seller's complete and unconditional offer to sell the specified goods, at CITY2, conclusively establishes CITY2 as the situs of the sale for Illinois ROT purposes such that the state and local tax rate in effect in CITY2 applies to the sale.

### ***Relevant Authorities***

The ROT statutes do not specifically address the rules for determining the proper location of the sale. However, substantial guidance can be found in the regulations issued by the Department of Revenue for the local Home Rule Municipal, Home Rule County, Regional Transportation Authority, Metro East Transit District, and Special Purpose County Retailers' Occupation Taxes. In addition, administrative regulations have the force of law in Illinois and are construed under the same rules that govern the construction of statutes. (Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon (1979), 75 Ill. 2d 53 18 Ill. 2d, 496, 165 N.E.2d 305, 387 N.E.2d 320 (1979), *cert. Denied*, 444 U.S. 844, 62 L. Ed. 2d 57, 100 S. Ct. 87).

Using consistent language, the local ROT regulations state that the Department considers the seller's acceptance of the purchase order or other contracting action in the making of the sales contract the most important single factor in the occupation of selling. Additionally, the regulations provide that if a purchase order *which is an acceptance of the seller's complete and unconditional offer to sell is received* by the seller's place of business or by someone working within a municipality that imposes Home Rule Municipal Occupation Tax ('HRMOT'), the seller incurs HRMOT liability in that jurisdiction. (86 Ill. Admin. Code Sec. 270.115).

Using identical language, the regulations state:

'Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of sections (f) and (g) of this section, or if a purchase order which is an acceptance of the seller's complete and

unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

The Regulations further state that:

'Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailer's Occupation Taxes with respect to such orders.'

It appears that there are no previously issued letter rulings with the precise fact pattern as presented here. However, several rulings on this matter involved taxpayers with similar order acceptance procedures. These rulings indicate that the receipt of the customer's acceptance of the seller's complete and unconditional offer to sell at CITY2 conclusively establishes the situs of the sale in CITY2 and, consequently, CITY2's HRMROT applies to the Seller's sales.

In support of the ruling request, the following PLRs use consistent language stating, '... if a purchase order which is an acceptance of the seller's *complete and unconditional offer to sell is received by the seller's place of business* within the municipality or by someone working out of such place of business, the seller incurs ROT liability in the respective jurisdiction.'

In PLR ST-00-0020, the Department ruled that the receipt of a signed contract representing a customer's acceptance of the taxpayer's complete and unconditional offer to sell goods established that city as the point in which the sale occurred. In issuing its ruling, the Department stated: 'Please note that receipt of an order is not necessarily acceptance. However, if when the order is received at City B, sellers become bound to perform the contract, without more, then a sale occurs in City B. If the contracts are thus accepted in City B, the state and local tax rate in effect in City B would be applied.'

In PLR 81-1566, the Department ruled that the Regional Transportation Authority ROT applied 'if the purchase order is accepted at the seller's place of business within the metropolitan region or by someone who is working out of such place of business...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan region or by someone working out of such place of business if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

PLR 82-0405 also indicates that 'if the purchase order is accepted at the seller's place of business within the municipality and if the purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received within the municipality, the seller incurs Municipal Retailers' Occupation Tax on that liability in that municipality

if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

In PLR 83-0579, in addressing a taxpayer that was charging tax at a rate based on its customer's billing address, rather than its location in COUNTY, the Department ruled that 'assuming that the purchase orders are accepted at the taxpayer's place of business within the CITY, or by someone working out of such place of business, or if the purchase order which is an acceptance of the taxpayer's complete and unconditional offer to sell is received by the taxpayer within such City, the taxpayer incurs local sales taxes of the CITY if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

In PLR 90-0857, the Department states that 'in determining whether there will be liability for the Home Rule Municipal Retailers' Occupation Taxes, the point at which the property will be used or consumed and the place at which the purchaser resides are immaterial. So long as your company does not have a place of business in a home rule municipality or salespersons who accept purchase orders for your Seller in a home rule municipality that imposes a tax, you will incur no local tax liability. It should be noted that the same considerations apply for other locally imposed taxes such as the Regional Transportation Authority Tax and the COUNTY Water Commission Tax and the like.' Rather the Department determined that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business in the home rule municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability.'

86 Il. Adm. 270.115(b)(1) explicitly states:

If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of Sections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by **someone working out of such place of business**, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. (emphasis added).

This regulation refers not to an 'employee' working out of the seller's place of business, but rather to 'someone' working out of the retailer's place of business. Based on this regulation, it seems to make no difference under the Department's jurisdiction whether the receipt of the Customers acceptance of the Seller's complete and unconditional offer to sell is performed by the Seller's agent or by the Seller's employee.

The Seller knows of no authority contrary to the above cited authorities.

## Conclusion

The facts further indicate that a sale is not binding on the Seller until the signed Sales Agreement is received by its representative in CITY2 and this is the final action necessary to bind the Seller to the sales contract.

Therefore we respectfully request that the Department issue a ruling stating that the receipt of a customer's acceptance of the Seller's unconditional offer to sell at CITY2 conclusively establishes CITY2 as the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY2 HRMROT) in effect in CITY2 applies.

Please feel free to contact ##### if you have any questions regarding this matter.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Based upon the facts set forth in your letter, the receipt of the signed Sale Agreements at the CITY2 office establishes CITY2 as the jurisdiction whose local tax rate applies to sales by SELLER.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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